

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

HATTIE BLUE, et al.,  
Plaintiffs,

v.

PAMELA SMITH, et al.,  
Defendants.

Case No.: 2:20-cv-00401-GMN-NJK

**ORDER**

(Docket No. 36)

Pending before the Court is the parties' proposed discovery plan. Docket No. 36. In reality, however, the parties request a stay of discovery pending resolution of Defendants' motion to dismiss. *See id.* at 3. As an initial matter, it is improper to seek a stay of discovery in a proposed discovery plan; if parties seek to stay discovery, they must file a request to stay discovery. *Cf.* Local Rule IC 2-2(b). Nonetheless, the Court will analyze this filing as a stipulation to stay discovery.

The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). "The mere fact that parties stipulate to a stay does not limit the Court's discretion to order a stay." *Estate of Evans v. Kinecta Fed. Credit Union*, 2014 WL 12790972, at \*1 (D. Nev. June 27, 2014). "The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). Discovery should proceed absent a "strong showing" to the contrary. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997).

The case law in this District makes clear that requests to stay discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken a "preliminary peek" at the

1 merits of the potentially dispositive motion and is convinced that the plaintiff will be unable to  
2 state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).<sup>1</sup>  
3 When stipulating to a stay of discovery, the parties have the burden to show that discovery should  
4 be stayed. *See Kabo Tools Co. v. Porauto Indus. Co.*, 2013 WL 5947138, at \*1 (D. Nev. Oct. 31,  
5 2013).

6 The Court finds that all the above standards are not met and therefore a stay of discovery  
7 is inappropriate. The Court finds that Defendants' motion to dismiss, Docket No. 25, is potentially  
8 dispositive and can be decided without discovery. The Court is not convinced, however, that  
9 Defendants' motion to dismiss "will prevail, and therefore, discovery [would be] a waste of effort."  
10 *Trazaska v. Int'l Game Tech.*, 2011 WL 1233298, at \*3 (D. Nev. Mar. 29, 2011).

11 Accordingly, the Court **DENIES** the parties' stipulation to stay discovery. Docket No. 36.  
12 The parties must file a proposed discovery plan no later than July 6, 2020.

13 IT IS SO ORDERED.

14 Dated: July 1, 2020

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Nancy J. Koppe  
United States Magistrate Judge  
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26 <sup>1</sup> Conducting the preliminary peek puts the undersigned in an awkward position because  
27 the assigned district judge who will decide the motion to dismiss may have a different view of its  
28 merits. *See Tradebay*, 278 F.R.D. at 603. The undersigned's "preliminary peek" at the merits of  
that motion is not intended to prejudice its outcome. *See id.* As a result, the undersigned will not  
discuss the merits of the pending motion to dismiss here. Still, the undersigned has carefully  
reviewed the arguments in the motion to dismiss and later briefing.